

January 29, 2014

Melissa M. Crosthwaite
Assistant City Attorney
4455 West 126th Street
Hawthorne, CA 90250-4482

Re: Your Request for Advice
Our File No. A-14-005

Dear Ms. Crosthwaite:

This letter responds to your request for advice on behalf of Hawthorne Mayor Pro Tem Angie Reyes English regarding the disclosure provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other ethics laws or rules, such as incompatible activities of local officers and employees under Section 1125, *et seq.*

QUESTION

Is a raffle prize (a flat-screen TV valued at approximately \$400 dollars) awarded to the Mayor Pro Tem in a raffle held at a Hawthorne employee-union holiday party a reportable gift?

CONCLUSION

The value of the raffle prize is reportable as a gift from the Hawthorne employee-union.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Hawthorne city's employees are represented by four recognized bargaining units: (1) the Hawthorne Managerial Employee Association ("HMEA") (2) the Hawthorne Executive Group (HEG); (3) the Hawthorne Police Management Supervisory Group, and (4) the Hawthorne Police Officer's Association. HMEA represents approximately 225 of the Hawthorne's 335 employees.

On December 6, 2013, HMEA held its biennial HMEA Holiday Party at the Sheraton in Los Angeles. Approximately 250 invitations to the HMEA Holiday Party were sent out to current members, retired members, and department heads of the City. About 160 invitees confirmed attendance, with about 130 individuals actually attending the Holiday Party. Attendees included current and retired city employees as well as their guests. The holiday party consisted of dinner, music, a photo booth and a raffle. To assist with the cost of the event, guests of members, retired members and "nonassociate members" (i.e. additional guests) were required to pay for their tickets. Guests and nonassociate members paid \$25 per person, and retired members paid \$30 per couple.

Only funds collected by the union from employees, non-employee elected officials, and dues paying HEG members were used to pay for the event. In addition, you stated that prizes for the raffle were purchased by the union with union dues and/or ticket sales (all moneys were collected by the union and placed into their general account). Dues-paying HMEA members who attended the event were each given one entry into the raffle. No raffle tickets were sold. Therefore, only current dues-paying members were eligible to receive a prize in the raffle and could receive no more than one prize.

Although they are not considered employees of the City, the City of Hawthorne gives members of the City Council the option of paying HMEA dues so as to become eligible to participate in HMEA member-only activities. The City offers the same to department heads who are members of the HEG. For eight years, the Mayor Pro Tem has paid HMEA membership dues.

ANALYSIS

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in the following ways:

- The Act imposes reporting obligations on certain public officials requiring that any gifts aggregating to \$50 or more from the same source received during the calendar year be disclosed on the officials' Statements of Economic Interests (FPPC Form 700) so that the public is made aware of any potential influences from gifts.
- The Act places limitations on the acceptance by certain public officials of gifts. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.)

- The Act prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date of the official's participation in the decision. (Sections 87100 and 87103(e); Regulations 18700 and 18703.4.)

Section 82028 broadly defines "gift" as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." Regulation 18942(a)(14) clarifies that a prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance is not a gift, but shall be reported as income. The question raised by your facts is whether or not the raffle would be considered related to the official's status or not.

Historically, we have advised that where the contest was open to the public and included both public officials and other persons who were not public officials, a prize awarded to a public official in a random drawing was not a gift. (See e.g., *Burns* Advice Letter, No. A-96-324.) The Act defines public official to be all members, officers, employees or consultant of a state or local government agency.²

In this case, the union distributed approximately 250 invitations to current members of the union, retired members and department heads of the City. Attendees included current and retired city employees as well as their guests. In addition, while not union-represented employees of the City, the City of Hawthorne gives members of the City Council the option of paying HMEA dues so as to become eligible to participate in HMEA member-only activities. Based on your facts, the prize was related to the Mayer Pro Tem's status as a public official because the prizes were only available to current and former city public officials and their guests. Because the competition was not open to members of the public, the prize was not won in a bona fide competition. Therefore, it does not fall under this exception and must be reported as a gift. Based on your facts, the prize was related to the Mayer Pro Tem's status as a public official because her ability to participate in member-only activities, including the raffle, was based solely on her official status as a councilmember. Consequently, the exception under Regulation 18942(a)(14) does not apply.

You also asked whether the fact that union dues paid for the event changed the fact that the raffle prize was a reportable gift or affected who the reportable donors were. With each dues payment the funds become the union's funds. The union is the source of the gift.

² The statute excludes (1) judges or court commissioners in the judicial branch of government; (2) members of the Board of Governors and designated employees of the State Bar of California; (3) members of the Judicial Council; (4) certain members of the Commission on Judicial Performance; and (5) a federal officer or employee serving in an official federal capacity on a state or local government agency.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl